the authorities he would be thrown out of Singapore; that on the night in question the deceased referred to this very sensitive subject when he asked aggressively, "Who has given houses to Malaysians?"; and that when he followed it up by challenging the appellant to a fight, the appellant completely lost his self-control and attacked the deceased. Counsel contended that all this closely following the previous ill-feeling between them, was sufficient provocation to reduce the offence from murder to culpable homicide not amounting to murder. It is pertinent to observe that the appellant, when giving evidence, did not say that he lost his self-control because of the abovementioned provocation by the deceased.

Although the defence raised at the trial was that of self-defence, it is clear from their judgment that the trial judges had the issue of provocation in mind when they found that "anything done by the deceased in the corridor did not raise the defence of either grave and sudden provocation or any of the other exceptions to section 300 of the Penal Code." In our judgment, on the evidence in this case, the trial judges came to a correct finding. The provocative acts relied upon in this case to constitute grave and sudden provocation within the meaning of Exception 1 of section 300 were not capable of constituting provocation sufficient to reduce the appellant's crime from murder to culpable homicide not amounting to murder. On the evidence, we cannot see how any reasonable jury, properly directed, could have found that the provocation proved might have induced a reasonable man to act as the appellant did. In our judgment, a reasonable jury would have found the appellant guilty of the crime of murder notwithstanding the proved provocation. Accordingly, the appellant's appeal against his conviction was dismissed.

Appeal dismissed.

Solicitors: *David Marshall.*

TAN AH LENG v. THE AMERICAN INSURANCE COMPANY

[O.C.J. (Wee Chong Jin C.J.) February 25, 1975]
[Singapore — Civil Suit No. 1142 of 1973]

Insurance — Motor insurance — Policy of insurance — Limitation clause as to use of vehicle — Whether motor vehicle was used for hire or reward and not in accordance with description of risk covered by policy of insurance.

The defendants had refused to pay the plaintiff the amount of the judgment and costs awarded to him as a result of an accident involving the motor car of one Yeo, which was insured with the defendants on the ground that at the material time the use of the insured motor car was not within the limitation clause and they were not on risk therefor. The plaintiff brought an action against the insurers for the amount awarded. The policy of insurance contained the usual limitation to use for service, domestic and pleasure purposes and stated that the policy did not cover use for hire or reward. The evidence showed that the motor car was on its way to fetch an employee of Pan-Am World Airways under an arrangement by which the plaintiff was to provide transport to the employees of the airways to and from Singapore airport to their houses. It was contended that even if this evidence was accepted, the hiring had not commenced until the car had arrived at the employee's house; and therefore at the time of the accident the car was not being used for hire or reward.

Held: on the facts, the hiring had commenced when the car was on its way to the employee's house and it was at the time of the accident used for hire and reward and was not being used in accordance with the description of the risk covered by the policy of insurance. The plaintiff's claim must therefore be dismissed.

Case referred to:-

(1) *Safety Insurance Co. Ltd.* v. *Koh Kim Kwee* Singapore — Civil Appeal No. 41 of 1971.

CIVIL SUIT.

Chim Hou Yan for the plaintiff.

P. Selvadurai for the defendants.

Wee Chong Jin C.J.: At or about 5.45 a.m. on 19th July 1968 the plaintiff was injured at Tanglin Road by a motor car No. SK. 62 owned by one Yeo Chin Choo and driven by one Daud bin Piee, a servant of Yeo Chin Choo. The plaintiff brought an action in Suit No. 7 of 1971 in the High Court against Yeo Chin Choo for damages for personal injuries suffered as a result of the negligent driving of the said servant of Yeo Chin Choo and obtained judgment for $19,800 and costs to be taxed. The costs were subsequently taxed at $4,397.

At the date of the accident there was in force a policy of insurance issued by the defendants to Yeo Chin Choo insuring him and anyone driving on his order or with his permission in respect of any liability at law for compensation, costs and expenses which might be incurred by Yeo Chin Choo or any other person driving on his said order or with his said permission in respect of the death or bodily injury of any person caused by or arising out of the use on a road of the said motor car SK. 62, being such a liability as is required to be covered by a policy of insurance under section 4(1)(b) of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap. 88). The Schedule to the policy of insurance contained the usual limitation clause which reads: —

"Conditions as to Use:—

Use only for social, domestic and pleasure purposes and for the Insured's business. The policy does not cover use for hire or reward. . . ."

The defendants refused to pay to the plaintiff the amount of the said judgment and costs, claiming that at the material time the use of the insured motor car SK. 62 was not within the limitation clause and they were not on risk therefor. The plaintiff accordingly commenced the present action.

At the trial the defendants called as a witness one Tony Sng, an aircraft mechanic employed by Pan-Am World Airways who said that his employers provided transport for those employees who either commence or finish work between midnight and 6 a.m. at the Singapore Airport. The transport was supplied by a firm known as Airport Hire Cars. It is common ground that Yeo Chin Choo is the sole proprietor of Airport Hire Cars. Tony Sng said that on the evening of July 18, 1968 he telephoned to Airport Hire Cars and arranged for a car to call at his house in Margaret Drive at between 5 and 5.30 a.m. the next morning to take him to the Singapore Airport. However, no car turned up at his house on the morning of the July 19, and he took a taxi to his work at the Singapore Airport. From there he telephoned at roughly before

10 a.m. to ask why no car had turned up at his house earlier in the morning and a lady who answered the phone replied that the car that had been sent to his house had met with an accident.

The plaintiff called Yeo Chin Choo to give evidence on his behalf. Yeo Chin Choo said that he had in July 1968 eight cars registered in the name of Airport Hire Cars. These eight cars were licensed as private hire cars. He also owned three private cars which were registered in his name, one of which was the motor car SK. 62. He denied that on the morning of July 19, 1968 there was an order for one of his private hire cars to take Tony Sng from his house at Margaret Drive to work at the Singapore Airport. He also said that no order had been placed with Airport Hire Cars on the previous evening by Tony Sng for a car to take him from his house to the airport on the morning of the July 19. Yeo Chin Choo said he was at his office when he received a telephone call from a friend at 5 a.m. on July 19 inviting him to breakfast at Hotel Malaysia. He said the friend had telephoned from the friend's house at Tanjong Rhu and offered to give him a lift back to his office after the breakfast. He said he had on previous occasions had breakfast with this friend as early as 5.30 a.m. and that the invitation to breakfast at Hotel Malaysia was to try the food at that hotel which had just recently opened. He did not dispute that his firm Airport Hire Cars had an arrangement with Pan-Am World Airways to provide transport for their employees to and from Singapore Airport to their homes. He said that when the invitation from his friend came Daud bin Piee who was one of four drivers employed by his firm was on shift duty and he asked Daud to drive him in his private car SK. 62 to Hotel Malaysia. He did not drive the car himself because his friend had offered him a lift back to his office after the breakfast. He said that after arriving at Hotel Malaysia he told Daud to drive the car back to the office. He later discovered from Daud that Daud had an accident at the junction of Tanglin Road and Jervois Road while driving his car. It is common ground that that junction would not be along the normal and direct route from Hotel Malaysia to the office of Airport Hire Cars and it is also common ground that that junction would be along the direct route from the office to Tony Sng's house at Margaret Drive.

Daud bin Piee also gave evidence on behalf of the plaintiff and his evidence is substantially the same as that of his employer. He said that after leaving Yeo Chin Choo at Hotel Malaysia he did not return to the office but proceeded along Tanglin Road towards Jervois Road because he wanted to have coffee at a sherbet stall near the junction of those two roads.

I have no hesitation in accepting Tony Sng's evidence and rejecting the evidence of Yeo Chin Choo and Daud bin Piee. I accept Tony Sng's evidence because I believe him and reject Yeo Chin Choo's and Daud's evidence because I disbelieve them. Furthermore, the probabilities favour Tony Sng's version and not the versions of Yeo Chin Choo and Daud as being the truth of the matter. It is most unusual and highly unlikely for two friends to breakfast at a hotel for the purpose of trying the food at a newly opened hotel and to do so at the extremely early hour of 5.30 a.m. in the morning. I do not accept the explanation given by Daud that he was travelling along the junction of Tanglin Road and Jervois Road because he was going to a sherbet stall near there for morning coffee. It is unlikely that he should so deviate from his normal route back. The fact that SK. 62 was travelling along that junction supports Tony Sng's evidence that he had placed an order with Airport Hire Cars to take him from his Margaret Drive home, which is near that junction, to the airport to work on the morning of the July 19.

Counsel for the plaintiff contends that even if Tony Sng's evidence is accepted, the hiring had not commenced until the car had arrived at Tony Sng's house. The submission is that at the time of the accident the car was not being used for hire or reward. He relies on a decision of the Court of Appeal in *Safety Insurance Co. Ltd.* v. *Koh Kim Kwee*[1] (Civil Appeal No. 41 of 1971) in support of his contention. In that case there was a similar limitation clause in the policy of insurance. The policy holder had been using the car insured under the policy sometimes as a pirate taxi and sometimes for his own private purposes. Just before the accident which gave rise to the claim the insured had come out of a side road having gone into that side road to drop five school children for which he was paid a fare of $1 and was on his way, with no passengers, to purchase a little fan to fix in his motor car. On those facts which he found the trial judge held that at the time of the accident the use of the car by the insured was covered by the policy. On appeal the Court of Appeal held that on the facts found by the trial judge the car was not at the time of the accident being used for hire or reward and was being used by the insured "for his own purpose, a usage covered by the policy, and the motor car was therefore on risk and the insurers were liable under the policy". The Court of Appeal in construing the limitation clause in that policy said: —

> "In our opinion, on the true construction of this clause, which restricted the use of the motor car, the parties had used language as words descriptive of the risk, and consequently when the motor car is not being used in accordance with the description it is not covered but it would be covered again when the motor car is used in accordance with the description (see *In re Morgan and Provincial Insurance Co. Ltd.* [1932] 2 K.B. 70)".

Thus, the question that I have to answer is whether on the facts motor car SK. 62 was at the time of the accident being used for hire or reward. It had left the office of Airport Hire Cars to the house of Tony Sng to transport him to the Singapore Airport for reward. On its way to Tony Sng's house the accident happened. In my judgment on these facts the hiring had commenced when the car was on its way to Tony Sng's house and it was at the time of the accident being used for hire or reward and was not being used in accordance with the description of the risk covered by the policy of insurance.

Accordingly, the plaintiff's claim is dismissed with costs.

Claim dismissed.

Solicitors: *Hilborne & Co.; Rodyk & Davidson.*